

enrichment arising from MPM Medical's failure to pay for an order of 1,000 units of another type of wound dressing at a price of \$35 per unit that it obtained from Maiden pursuant to a purchase order for a custom-made order, in the amount of \$35,000.

PARTIES

2. Plaintiff Maiden is a Maryland corporation with its principal place of business in Montgomery County, Maryland.

3. Defendant MPM Medical is a Texas corporation with its principal place of business in Dallas County, Texas.

4. Defendant RBC LifeSciences is a Texas corporation with its principal place of business in Dallas County, Texas.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

6. This Court is the proper venue for this matter pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

I. BACKGROUND.

7. Maiden manufactures medical devices.

8. MPM Medical is a distributor of products used in the healthcare industry.

9. MPM Medical is a wholly owned subsidiary of RBC LifeSciences.

10. RBC LifeSciences and MPM Medical have the same address and share the same office. RBC LifeSciences and MPM Medical have the same Chief Financial Officer, Chief Executive Officer, and Regulatory and Inventory Managers. Employees of RBC LifeSciences and MPM Medical have both corporations listed on their business cards.¹

11. On or about September 2, 2016 MPM Medical (“Buyer”) and Maiden (“Seller”) entered into a Supply Agreement governed by Texas law, a copy of which is attached hereto as **Exhibit 1** (“the Supply Agreement”). The Supply Agreement establishes an exclusive relationship with Maiden² as supplier of Triple Helix Collagen, and provides that during the term of the Supply Agreement, MPM Medical shall purchase each calendar year a minimum of 600,000 units of Triple Helix Collagen, with a prorate provision for the year 2016.

12. The contract is for a custom-made order bearing MPM’s label; thus, such product cannot be returned or used by Maiden for other customers.

13. Both parties agreed upon a price of \$3.45 per unit for the Triple Helix Collagen.

¹ MPM Medical and RBC LifeSciences are alter egos of each other. For ease of reference only, the corporations will be collectively referred to as “MPM Medical” throughout this Complaint.

² Anteco Pharma is also a party to the Supply Agreement. It is not, however, a necessary party to this action.

II. FAILURE TO PURCHASE.

14. As of January 1, 2017, MPM Medical had not placed any orders pursuant to the Supply Agreement. This constitutes a breach of contract for 2016. Per the prorate provision, MPM Medical was required to purchase 200,000 units for four months (September to December of 2016), at a prorated basis of 50,000 units per month. At a price of \$3.45 per unit, the damage caused by MPM Medical's failure to order the minimum units in 2016 is \$690,000.

15. On or about February 1, 2017 MPM Medical finally placed its first order for Triple Helix Collagen in an amount of 100,000 units at a price of \$3.45 per unit. *See* Purchase Order, attached hereto as Exhibit 2.

16. Consecutively, on March 29, 2017 and April 6, 2017, Maiden successfully filled that order and sent MPM Medical an associated invoice dated February 1, 2017.

17. MPM Medical failed to pay the February 1, 2017 invoice on time, but after repeated requests for payment, eventually paid in full.

18. Thus far, MPM Medical has failed to place any other orders pursuant to the Supply Agreement.

19. In response to questions as to why it had not placed any additional orders, on or about June 26, 2017, MPM Medical stated that it was "sitting on over \$1.2 million (at cost)" of the product. *See* E-mail from J. Pyle, attached hereto as Exhibit 3. Given that MPM Medical had purchased only 100,000 units at that point, Maiden questioned the assertion that MPM Medical was "sitting on" that much product.

20. Realizing that Maiden had not sold that much product to MPM Medical, Maiden investigated and learned that MPM Medical had been purchasing product from another manufacturer in violation of the exclusivity agreement.

21. In 2017, MPM Medical has only ordered 100,000 units of Triple Helix Collagen from Maiden (totaling two months on a prorated basis). As of October 2017, MPM Medical has failed to order 400,000 units on a prorated basis. At a price of \$3.45 per unit, the potential financial loss incurred by Maiden due to MPM Medical's failure to order the minimum amount of units is \$1,380,000.00.

III. NON-PAYMENT FOR "TRIPLE HELIX" SHEETS.

22. On or about March 28, 2017, MPM Medical submitted a purchase order to Maiden, requesting "Triple Helix Sheets". See **Exhibit 4** attached hereto.

23. Maiden accepted the request and filled the order in a timely manner.

24. The Triple Helix Sheets are custom-made bearing MPM Medical's label, and thus such product cannot be returned or used by Maiden for other customers.

25. MPM Medical confirmed the receipt of the product and sold it to its customer(s).

26. With regard to this specific order, Maiden sent MPM Medical an invoice dated March 28, 2017 in the amount of \$35,000.00. The payment term was 30 days.

27. MPM Medical failed to pay for the Triple Helix Sheets, resulting in damages to Maiden in the amount of \$35,000.00.

COUNT I
Breach of Contract

28. Maiden re-alleges and incorporates the foregoing paragraphs as if fully set forth herein.

29. MPM Medical breached §2.11 of the Supply Agreement by not ordering the prorated-minimum annual purchase each calendar year of 600,000 units of Triple Helix Collagen.

30. The contract was entered on September, 2016. There was no order in 2016. On a prorated basis at a price of \$3.45 per unit, the monetary damages incurred by Maiden as a consequence of the breach are \$690,000 for the four months (September to December) of non-purchase.

WHEREFORE, Plaintiff Maiden demands judgment against MPM Medical in the amount of \$690,000.00 in monetary damages, plus interest, costs and attorneys' fees and any and all other relief to which this Court finds them entitled.

COUNT II
Breach of Contract

31. Maiden re-alleges and incorporates the foregoing paragraphs as if fully set forth herein.

32. On or about March 28, 2017, MPM Medical ordered "Triple Helix Sheets" from Maiden via a purchase order.

33. Maiden accepted the request and filled the order in a timely manner.

34. Maiden sent MPM Medical an invoice dated March 28, 2017 in the amount of \$35,000.00 for the Sheets. The payment term was 30 days.

35. As of the date of this Complaint, MPM Medical has failed to pay anything for the Sheets.

WHEREFORE, Plaintiff Maiden demands judgment against MPM Medical in the amount of \$35,000.00 in monetary damages, plus interest, costs and attorneys' fees and any and all other relief to which this Court finds them entitled.

COUNT III
Unjust Enrichment

36. Maiden re-alleges and incorporates the foregoing paragraphs as if fully set forth herein.

37. MPM Medical's receipt and acceptance of the Triple Helix Sheets make it inequitable for MPM Medical to retain these products without payment for their value.

38. As a consequence of MPM Medical's refusal to make payment for the Products it ordered and received, MPM Medical is unjustly enriched in the amount of \$35,000.00.

WHEREFORE, Plaintiff Maiden demands judgment against MPM Medical in the amount of \$35,000.00 in monetary damages, plus interest, costs and any and all other relief to which this Court finds him entitled.

Date: October 16, 2017

Respectfully submitted,

/s/

William N. Sinclair, Esq. (# 28833)
Silverman Thompson Slutkin & White, LLC
201 N. Charles Street, Suite 2600
Baltimore, Maryland, 21201
(410)-385-2225 (t)
(410)-547-2432 (f)
bsinclair@mdattorney.com

Attorney for Plaintiffs